

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER h: WATER RESOURCES

PART 3708  
FLOODWAY CONSTRUCTION IN NORTHEASTERN ILLINOIS

Section	
3708.10	Purpose
3708.20	Definitions
3708.30	Jurisdiction
3708.40	General Provisions
3708.50	Regulatory Floodway Maps
3708.60	Delineation of the Regulatory Floodway
3708.70	Permitting Appropriate Uses of the Regulatory Floodway
3708.80	Changes to the Regulatory Floodway
3708.90	Delegation to Municipalities and Counties
3708.100	Violations
3708.110	Permit Application
3708.115	Permit Application Fee
3708.120	Public Notice
3708.130	Public Hearings
3708.140	Time to Permit Issuance; Emergency Authorizations; Duration; Revisions
3708.150	Permit Conditions
3708.160	General Permits
3708.170	Regional Permits and Statewide Permits
3708.175	Permits Not Transferrable
3708.180	Final Administrative Decisions
3708.190	Effective Date

**AUTHORITY:** Implementing and authorized by Sections 18g and 35 of the Rivers, Lakes and Streams Act [615 ILCS 5/18g and 35].

**SOURCE:** Adopted at 12 Ill. Reg. 20547, effective November 29, 1988; amended at 13 Ill. Reg. 8667, effective May 23, 1989; amended at 16 Ill. Reg. 194, effective December 19, 1991; amended at 18 Ill. Reg. 11284, effective July 5, 1994; recodified from 92 Ill. Adm. Code 708, Department of Transportation, to the Department of Natural Resources, at 22 Ill. Reg. 7362; amended at 27 Ill. Reg. 7782, effective April 21, 2003; amended at 38 Ill. Reg. 983, effective December 27, 2013; amended at 39 Ill. Reg. 1176, effective December 31, 2014.

**Section 3708.10 Purpose**

The purpose of this Part is to provide rules governing construction and filling in the regulatory

floodway of rivers, lakes and streams of Cook, DuPage, Kane, Lake, McHenry and Will Counties, excluding the City of Chicago so that *periodic inundation* will not:

- a) *Pose a danger to the general health and welfare of the user;*
- b) *Require the expenditure of public funds;*
- c) *Require the provision of public resources or disaster relief services* (Section 18g of the Rivers, Lakes and Streams Act [615 ILCS 5]; and
- d) *Result singularly or cumulatively in greater flood damages or potential flood damages due to increases in flood stage or velocities or loss of flood storage.*

### **Section 3708.20 Definitions**

Unless specifically defined in this Section, words and phrases used in this Part shall be interpreted so as to give them the meaning they have in common usage.

"Act" – The Rivers, Lakes and Streams Act [615 ILCS 5].

"Application" – An application for a permit to authorize new construction in a regulatory floodway as required by this Part.

"Appropriate Use" – See Section 3708.70.

"Building" – A structure that is principally above ground and is enclosed by walls and a roof. This term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. This term also includes recreational vehicles and travel trailers to be installed on a site for more than 180 days.

"Conditional Approval of a Regulatory Floodway Map Change" – Preconstruction approval by the Department and FEMA of a proposed change to the floodway map. This preconstruction approval, pursuant to this Part, gives assurances to the property owner that once an appropriate use is constructed according to permitted plans, the floodway map can be changed, as previously agreed, upon review and acceptance of as-built plans. The Department will accept as-built plans which show the project was built in accordance with the permitted plans.

"Department" – The Illinois Department of Natural Resources.

"FEMA" – Federal Emergency Management Agency and its regulations at 44 CFR 65 effective as of October 1, 1988. This incorporation does not include any later editions or amendments.

"Flood Fringe" – That portion of the flood plain outside the regulatory floodway.

"Flood Plain" – That land adjacent to a body of water with ground surface elevations at or below the 100-year frequency flood elevation.

"Hydraulically Significant" – The length of a hydraulically significant portion of a watershed is determined by three factors; the drainage area of the watershed, the amount of flood plain storage in the regulatory floodway of the stream, and the impact flood plain storage has on reducing downstream flood heights. For example, on a stream with a small drainage area, with little flood plain storage, and little downstream impact, only one municipality may have to require effective compensatory storage. On larger streams, several communities may be involved.

"New Construction" – *The construction of any new building or structure or the placement of any fill, material, or structure or regrading but does not include the repair, remodeling, or maintenance of buildings or structures in existence on November 18, 1987* (Section 18g of the Act).

"Office" – The Illinois Department of Natural Resources, Office of Water Resources.

"Public Flood Control Project" – A flood control project which will be operated and maintained by a public agency to reduce flood damages to existing buildings and structures which includes a hydrologic and hydraulic study of the existing and proposed conditions of the watershed. Nothing in this definition or this Part shall preclude the design, engineering, construction or financing, in whole or in part, of a flood control project under this Part by persons or parties who are not public agencies.

"Registered Land Surveyor" – A land surveyor registered in the State of Illinois, under the Illinois Professional Land Surveyor Act [225 ILCS 330].

"Registered Professional Engineer" – An engineer registered in the State of Illinois, under the Illinois Professional Engineering Practice Act [225 ILCS 325].

"Regulatory Floodway" – *The channel and that portion of the floodplain adjacent to a stream or watercourse as designated by the Department pursuant to Section 18g of the Act, which is needed to store and convey the 100-year frequency flood discharge* with no more than a 0.1 foot increase in stage due to the loss of flood conveyance or storage, and no more than a 10% increase in velocities (Section 18g of the Act).

"Repair, Remodeling or Maintenance" – Construction activities which do not

result in any increases in the outside dimensions of a building or any changes to the dimensions of a structure.

"Structure" – The results of a man-made change to the land constructed on or below the ground, including the construction, reconstruction or placement of a building or any addition to a building; installing a manufactured home on a site, preparing a site for a manufactured home or installing a travel trailer on a site for more than 180 days; installing utilities, construction of roads or similar projects; construction or erection of levees, walls, fences, bridges or culverts; drilling, mining, filling, dredging, grading, excavating; and the storage of materials.

"Transition Sections" – are reaches of the stream or floodplain where water flows from a narrow cross-section to a wide cross-section or vice versa.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

### Section 3708.30 Jurisdiction

a) Activities Requiring a Permit Under This Part

The following activities are subject to this Part and require a permit from the Department: *New construction within the regulatory floodways in Cook, Dupage, Kane, Lake, McHenry and Will Counties, except for those areas which are within the City of Chicago* (Section 18g of the Act).

b) Exempted Activities

The following activities are specifically exempt from this Part: *repair, remodeling or maintenance of buildings or structures in existence as of November 18, 1987*, (Section 18g of the Act).

c) Government Activities

Activities of the Department and all other state, federal and local units of government such as drainage districts, school districts, park districts, forest preserve districts, must comply with this Part.

### Section 3708.40 General Provisions

a) It is not the intention of this Part to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this Part imposes more stringent restrictions than existing easements, covenants, or deed restrictions, the provisions of this Part shall prevail.

b) In their interpretation and application, the provisions of this Part shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any

other State Statutes or rules or Department programs. For example, if the Department owns land to which these rules apply, lessees may be required to meet lease restrictions on proposed construction activities in addition to this Part.

- c) This Part shall not create liability on the part of the Department or any officer or employee thereof for any flood damages that result from reliance on this Part or any administrative decision lawfully made thereunder.
- d) If any part of this Part is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Part shall not be affected thereby.

#### **Section 3708.50 Regulatory Floodway Maps**

The Department will compile and keep a list of all regulatory floodway maps it has designated. The list will indicate the source and date of each designated map. Each municipality and county will be given a list of designated regulatory floodway maps in effect in its jurisdiction. A copy of the list will be available for inspection in the Office of Water Resources at the Region 2 Office, 2050 West Stearns Road, Bartlett IL 60103.

(Source: Amended at 27 Ill. Reg. 7782, effective April 21, 2003)

#### **Section 3708.60 Delineation of the Regulatory Floodway**

- a) The regulatory floodway is defined based on a flood event that has a one percent annual chance of exceedence or an expected 100-year recurrence interval. The Department encourages, but does not require, that the 100-year frequency flood event be determined based on anticipated future land use in the watershed. When utilized, anticipated future land use should be based on adopted local or regional land use plans.
- b) The boundary of the regulatory floodway is portrayed on Department regulatory floodway maps. To locate the regulatory floodway boundary on any site, the regulatory floodway boundary should be scaled off the regulatory floodway map and located on a site plan, using reference marks common to both maps. Where interpretation is needed to determine the exact location of the regulatory floodway boundary, the Office should be contacted for the interpretation.
- c) The regulatory floodway boundaries are determined by hydraulic and hydrologic analyses, which calculate that portion of the flood plain which must be preserved to store and discharge floodwaters without causing damaging or potentially damaging increases in flood stage and flood velocities or loss of flood storage which would result singularly or cumulatively in more than a 0.1 foot increase in flood stage or a 10% increase in velocity.

- d) The need to preserve storage when defining the regulatory floodway will be waived by the Department if all the municipalities and counties along a hydraulically significant portion of the watershed require effective compensatory storage for all construction and fill in the 100-year frequency flood plain. Effective compensatory storage requires flood plain storage volumes be replaced at the same flood frequency event as previously existed. Additionally, legal assurances such as easements must be provided so that the compensatory storage site will remain open to the stream system in order to allow flood waters to reach it.
- e) Determination of the flood elevation at any point along the stream shall be made from the flood profile.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

#### **Section 3708.70 Permitting Appropriate Uses of the Regulatory Floodway**

- a) The Department will issue permits for appropriate uses of the regulatory floodway of which *periodic inundation will not pose a danger to the general health and welfare of the user or require the expenditure of public funds or the provisions of public resources or disaster relief services* (Section 18g of the Act) or result in increased flood stages due to the singular or cumulative loss of regulatory floodway storage or regulatory floodway conveyance or increase in flood velocities.
- b) To receive a permit for work in the regulatory floodway, the proposed construction shall meet two criteria:
  - 1) The proposed construction shall be an appropriate use of the regulatory floodway as defined in subsection (c); and
  - 2) The proposed construction shall not reduce the regulatory floodway storage or conveyance and shall not increase regulatory floodway velocities.
- c) Appropriate uses of the regulatory floodway that will be considered for permit issuance consist of construction, modification, repair, or replacement of:
  - 1) *Flood control structures, dikes, dams and other public works or private improvements relating to the control of drainage, flooding or erosion* (Section 18g of the Act) or water quality or habitat for fish and wildlife (e.g. Section 3708.80(a)(3) and(4));
  - 2) *Structures or facilities relating to the use of, or requiring access to, the*

*water or shoreline, such as pumping and treatment facilities, and facilities and improvements related to recreational boating, commercial shipping and other functionally dependent uses (Section 18g of the Act);*

- 3) Storm and sanitary sewer outfalls;
- 4) Underground and overhead utilities;
- 5) Recreational facilities such as playing fields and trail systems including any related fencing built parallel to the direction of flood flows;
- 6) *Detached Garages, storage sheds, or other non-habitable accessory structures to existing buildings that will not block flood flows. This does not include the construction or placement of any other new structures,* (Section 18g of the Act) fill, building additions, buildings on stilts, fencing (including landscaping or plantings designed to act as a fence) and the storage of materials;
- 7) Bridges, culverts, roadways, sidewalks, railways, runways and taxiways and any modification thereto;
- 8) Parking lots built at or below existing grade where either:
  - A) the depth of flooding at the 100-year frequency flood event will not exceed 1.0 foot; or
  - B) the parking lot is for short-term outdoor recreational use facilities where the applicant agrees to restrict access during overbank flooding events and agrees to accept liability for all damage caused by vehicular access during all overbank flooding events;
- 9) Aircraft parking aprons built at or below ground elevation where the depth of flooding at the 100-year frequency flood event will not exceed 1.0 foot;
- 10) Regulatory floodway regrading, without fill, to create a positive slope toward a watercourse;
- 11) Flood proofing activities to protect existing structures such as, but not limited to, constructing water tight window wells, and elevating;
- 12) The replacement, reconstruction or repair of a damaged building, provided that the outside dimensions of the building are not increased, and provided that, if the building is damaged to 50% or more of the building's market value before it was damaged, the building will be protected from flooding

to or above the 100-year frequency flood elevation; and

- 13) Modifications to an existing building that would not increase the enclosed floor area of the building below the 100-year frequency flood elevation, and which will not block flood flows including but not limited to, fireplaces, bay windows, decks, patios and second story additions.
- d) The construction of an appropriate use below the 100-year frequency flood elevation will be considered permissible provided the proposed project meets the following criteria and is so stated in writing with supporting plans, calculations and data by a registered professional engineer or in the case of a federal project, by the federal agency:
- 1) In the case of the construction of a new bridge or culvert crossing and roadway approach, the proposed structure shall not result in an increase of upstream flood stages greater than 0.1 foot when compared to the existing conditions for all flood events up to and including the 100-year frequency event; or the upstream flood stage increases will be contained within the channel banks (or within existing vertical extensions of the channel banks) such as within the design protection grade of existing levees or flood walls or within recorded flood easements; or a flood control project is built to mitigate the increased backwater due to the structure.
  - 2) In the case of bridge and culvert reconstruction or modification, the bridge or culvert and roadway approach reconstruction or modification shall be constructed with no more than 0.1 foot increase in backwater over the existing flood profile for all flood frequencies up to and including the 100-year event, if the existing structure is not a source of flood damage. The proposed construction shall meet the following criteria:
    - A) The proposed structure, including approach roads, does not result in an increase in upstream stages for normal and flood flows when compared to the existing structure.
    - B) On publicly navigated waterways, the proposed structure is not an obstruction to navigation.
    - C) The determination as to whether the existing structure is a source of flood damage shall be made according to the following method:
      - i) Determine the increase in upstream flood profile due to the existing bridge or culvert by calculation or from the flood study used to delineate the regulatory floodway for all



- reported flood profiles up to and including the 100-year flood.
- ii) Determine if there are any buildings or structures located in the 100-year flood plain upstream of the existing bridge or culvert that may be subjected to flooding. The upstream flood plain shall be checked for the length of stream required for the backwater impacts due to the existing bridge or culvert to be reduced to 0.1 foot or less.
  - iii) Collect the low opening elevations or lowest damageable elevations of the upstream buildings and structures as identified in subsection (d)(2)(c)(ii), above. Determine if any buildings or structures are subject to inundation by the 100-year frequency flood event.
- 3) In the case of bridge or culvert reconstruction and modification, if the existing bridge or culvert and roadway approach is a source of flood damage to buildings or structures in the upstream flood plain, based on the above review, the applicant's engineer must evaluate the feasibility of redesigning the structure to reduce the existing backwater, taking into consideration the effects on flood stages on upstream and downstream properties.
- A) The applicant's engineer must submit to the Department his or her evaluation to justify why the proposed structure should be designed to allow an increase in the upstream flood stage of more than 0.1 foot when compared to a flood stage without the existing bridge or culvert or roadway approach in place for all flood events up to and including the 100-year frequency event.
  - B) The evaluation shall also consider the feasibility of containing the upstream flood stage increases within the channel banks (or within existing vertical extensions of the channel banks such as within the design protection grade of existing levees or flood walls), or within recorded flood easements; or constructing a flood control project to mitigate the increased backwater due to the structure.
- 4) In the case of any other on-stream structure built for the purpose of backing up water in the stream during normal or flood flows, but not permitted as a dam according to 17 Ill. Adm. Code 3702 (Construction and Maintenance of Dams), the proposed structure shall not result in an increase of upstream flood stages greater than 0.0 foot when compared to the existing conditions, for all flood events up to and including the 100-

year frequency event; or the upstream flood stage increases will be contained within the channel banks (or within existing vertical extensions of the channel banks) such as within the design protection grade of existing levees or flood walls or within recorded flood easements; or a flood control project is built to mitigate the increased backwater due to the structure.

- 5) In the case of the construction of appropriate uses other than bridge or culvert crossings, on-stream structures or dams, all effective regulatory floodway conveyance lost due to the project will be replaced for all flood events up to and including the 100-year frequency flood. In calculating effective regulatory floodway conveyance, the following factors must be taken into consideration:

- A) Regulatory floodway conveyance,  $"K" = \frac{1.486A R^{2/3}}{n}$

where "n" is Manning's roughness factor, "A" is the effective area of the cross-section, and "R" is the ratio of the area to the wetted perimeter. (See Open Channel Hydraulics, Ven Te Chow, 1959 Edition, McGraw-Hill Book Company, New York, New York. This incorporation contains no later editions or amendments).

- B) The same Manning's "n" value shall be used for both existing and proposed conditions unless a recorded maintenance agreement with a federal, state or local unit of government can assure the proposed conditions will be maintained or the land cover is changing from a vegetative to a non-vegetative land cover.
- C) Transition sections must be provided and used in calculations of effective regulatory floodway conveyance. The following expansion and contraction ratios shall be used unless an applicant's engineer can prove to the Department through engineering calculations and model tests that more abrupt transitions may be used with the same efficiency:
- i) When water is flowing from a narrow section to a wider section, the water should be assumed to expand no faster than at a rate of one foot horizontal for every four feet of the flooded stream's length.
  - ii) When water is flowing from a wide section to a narrow section, the water should be assumed to contract no faster than at a rate of one foot horizontal for every one foot of the flooded stream's length.

- iii) When expanding or contracting flows in a vertical direction, a minimum of one foot vertical transition for every ten feet of stream length shall be used.
  - iv) Transition sections shall be provided between cross-sections with rapid expansions and contractions and when meeting the regulatory floodway delineation on adjacent properties.
  - v) All cross-sections used in the calculations must be located perpendicular to flood flows.
- 6) For all appropriate uses, compensatory storage shall be provided for any regulatory floodway storage lost due to the proposed work from the volume of fill or structures placed and the impact of any related flood control projects. Artificially created storage lost due to a reduction in head loss behind a bridge shall not be required to be replaced. The compensatory regulatory floodway storage must be placed between the proposed normal water elevation and the proposed 100-year flood elevation. All regulatory floodway storage lost below the existing 10-year flood elevation must be replaced below the proposed 10-year flood elevation. All regulatory floodway storage lost above the existing 10-year flood elevation must be replaced above the proposed 10-year flood elevation. If the compensatory storage will not be placed at the location of the proposed construction, the applicant's engineer must demonstrate to the Department through a determination of flood discharges and water surface elevations that the compensatory storage is hydraulically equivalent.
- 7) For all appropriate uses, except bridges or culverts or on-stream structures, the proposed work will not result in an increase in the average channel or regulatory floodway velocities. However in the case of bridges or culverts or on-stream structures built for the purpose of backing up water in the stream during normal or flood flows, velocities may be increased at the structure site if scour, erosion and sedimentation will be avoided by the use of rip-rap or other design measures.
- 8) When excavation is proposed in the design of the bridge and culvert openings, including the modifications to and replacement of existing bridge and culvert structures, or to compensate for lost conveyance for other appropriate uses, transition sections must be provided for the excavation. The following expansion and contraction ratios shall be used unless an applicant's engineer can prove to the Department through

engineering calculations and model tests that more abrupt transitions may be used with the same efficiency:

- A) When water is flowing from a narrow section to a wider section, the water should be assumed to expand no faster than at a rate of one foot horizontal for every four feet of the flooded stream's length;
  - B) When water is flowing from a wide section to a narrow section, the water should be assumed to contract no faster than at a rate of one foot horizontal for every one foot of the flooded stream's length; and
  - C) When expanding or contracting flows in a vertical direction, a minimum of one foot vertical transition for every ten feet of stream length shall be used.
- 9) If the 100-year regulatory floodway elevation at the site of the proposed construction is affected by backwater from a downstream receiving stream with a larger drainage area, the proposed construction shall be shown to meet the requirements of this section for the 100-year frequency flood elevations of the regulatory floodway conditions and conditions with the receiving stream at normal water elevations. However, for bridge and culvert construction or reconstruction, a smaller bridge or culvert may be built if it can be demonstrated to the Department that the proposed structure would meet the requirements of this section for the 100-year frequency flood elevation of the regulatory floodway flood study profile and would not be a source of flood damage as determined according to the method described in subsections (d)(2)(C)(i)-(iii), to any existing upstream building or structure when analyzed as follows:
- The proposed bridge or culvert shall be analyzed for a 100-year flood frequency flow on the tributary stream and for all tailwater elevations on the receiving stream between and including the normal water elevation and the 10-year flood frequency elevation.
- 10) If an applicant learns from the Department, local government or a private owner that a downstream restrictive bridge or culvert is scheduled to be removed, reconstructed, modified, or a public flood control project is scheduled to be built within the next five years, the proposed construction shall be analyzed and shown to meet the requirements of this Section for both the existing conditions and the expected flood profile conditions when the bridge, culvert or flood control project is built.

- 11) In the case of flood proofing activities, if construction is required beyond the outside dimensions of an existing building, the flood proofing construction shall be placed as close as possible to the existing building and be the minimum width necessary to protect the building. Compensation of lost storage and conveyance will not be required for flood proofing activities.
- 12) For public flood control projects (as defined in Section 3708.20), the permitting requirements of this Section will be considered met if the applicant can demonstrate to the Department through hydraulic and hydrologic calculations that the proposed project will not singularly or cumulatively result in increased flood heights outside the project right-of-way or easements for all flood events up to and including the 100-year frequency event.
- 13) If the appropriate use would result in a change in the regulatory floodway location or the 100-year frequency flood elevation, the applicant shall submit to the Department and to FEMA all the information, calculations and documents necessary to be issued a conditional regulatory floodway map revision and receive from the Department a conditional approval of the regulatory floodway change before a permit is issued. However, the final regulatory floodway map will not be changed by the Department until as-built plans are submitted and accepted by FEMA and the Department. In the case of non-government projects, the municipality in incorporated areas and the county in unincorporated areas must concur with the proposed conditional regulatory floodway map revision before Department approval can be given.
- 14) All engineering analyses shall be performed by or under the supervision of a registered professional engineer, except in the case of a federal project.
- 15) All dams, as defined by 17 Ill. Adm. Code 3702, shall meet the permitting requirements of Part 3702 (Construction and Maintenance of Dams).

(Source: Amended at 18 Ill. Reg. 11284, effective July 5, 1994)

#### **Section 3708.80 Changes to the Regulatory Floodway**

- a) The 100-year frequency flood profile and regulatory floodway shall not be changed by the Department unless one of the following has occurred:
  - 1) The original regulatory floodway delineation is shown by the applicant's engineer to be in error based upon a review of physical data or the mathematical model;

- 2) There are changed conditions such as changes in land use or modifications to the ground elevations which require modification of the original regulatory floodway computations;
  - 3) A public flood control project has been constructed and is operable; or
  - 4) The unit of local government exercising zoning control over an area within its corporate limits proposes or concurs in the proposal that the floodway storage or conveyance be relocated to facilitate development and a unit of local government will either:
    - A) Assume responsibility to operate and maintain any modifications or improvements made to relocate the floodway; or
    - B) Have the right and will agree, upon default of the party primarily responsible for such operation and maintenance, to undertake such operation and maintenance.
- b) Any person contesting the correctness of the delineation shall be given an opportunity to submit his or her own technical evidence of error or changed conditions. The Department will review the technical evidence to determine the correctness of the delineation.
- c) Effective regulatory floodway conveyance or storage can be relocated by moving the regulatory floodway delineation onto the existing flood fringe property if the following criteria are met:
- 1) It must be shown through engineering calculations that the new regulatory floodway storage or conveyance gained effectively compensates for lost regulatory floodway storage or conveyance;
  - 2) If the affected property is other than the applicant's or is subdivided or proposed to be subdivided, covenants shall be obtained and recorded on the affected properties to assure that they are maintained with the existing and future owner's agreement as regulatory floodway storage or conveyance areas;
  - 3) The regulatory floodway map is revised to include the new area as regulatory floodway; and
  - 4) A notice of such regulatory floodway map change is recorded with the affected parcel in the county recorder's office.

- d) After receipt of conditional approval of the regulatory floodway change and issuance of a permit, construction as necessary to change the regulatory floodway designation may proceed but no buildings or structures or other construction that is not an appropriate use may be placed in that area until the regulatory floodway map is changed. The regulatory floodway map will be revised upon acceptance by the Department and FEMA of the "as-built" plans.
- e) The Department may require deed restrictions, performance bonds or sureties, as-built certification or maintenance guarantees to assure projects are built according to permitted plans.
- f) All field surveys as required by this Part shall be conducted under the supervision of a registered professional engineer or registered land surveyor, and shall be so sealed. All required engineering analyses shall be conducted under the supervision of a registered professional engineer or in the case of a federal project, by the federal agency and shall be so sealed or stated.

(Source: Amended at 13 Ill. Reg. 8667, effective May 23, 1989)

#### **Section 3708.90 Delegation to Municipalities and Counties**

- a) *No unit of local government, including home rule units, may issue a building permit or other apparent authorization for any prohibited new construction within the regulatory floodway (Section 18g of the Act).*
- b) The Department will delegate to municipalities within incorporated areas and to counties within unincorporated areas the Department's authority to issue permits in accordance with this Part for non-governmental activities, upon determination by the Office that the following conditions have been met:
  - 1) The municipality or county is participating in the regular phase of the National Flood Insurance Program;
  - 2) The municipality or county has enacted an ordinance that adopts requirements at least as restrictive as this Part; and
  - 3) The municipality or county has enacted an ordinance which requires that all proposed regulatory floodway projects are reviewed under the supervision of a registered professional engineer under the employ or contract of the municipality or county and, in the case of appropriate uses, so stated in writing by that registered professional engineer to meet the specific requirements of Section 3708.70.
- c) A completed permit application form must be submitted to the Department for

regulatory floodway construction activities proposed in a delegated municipality or county. The Department will review the application to determine if the proposed activity qualifies for review by the delegated municipality or county pursuant to subsection (j). When the Department determines a regulatory floodway construction activity does qualify, it will notify the delegated community in writing that it has the authority to review and, if appropriate, authorize the activity for compliance with this Part. This process is subject to a permit application review fee as described in Section 3708.115.

- d) The only permits a municipality or county may issue for new construction in a regulatory floodway are for appropriate uses as defined by Section 3708.70.
- e) If the proposed appropriate use will require a regulatory floodway delineation change or will change the flood stage elevation, the municipality or county shall require that the applicant obtain a conditional approval of the regulatory floodway map change from the Department and FEMA before a permit is issued for the appropriate use.
- f) No buildings or structures or other construction that is not an appropriate use shall be placed in a designated regulatory floodway until the designated regulatory floodway map has been revised to remove the building site from the regulatory floodway. A conditional approval of a regulatory floodway map change is not a change in the regulatory floodway map. After completing a project which will result in a regulatory floodway map revision, the applicant must submit "as built" plans to the Office and FEMA to revise the regulatory floodway map. The municipality or county will then be notified by the Department or FEMA when the regulatory floodway map has been changed, at which time a building permit may be issued.
- g) No municipality or county shall issue a variance not in compliance with this Part.
- h) Municipalities and counties may adopt and enforce ordinances with greater restrictions than those of this Part.
- i) If a municipality or county issues a regulatory floodway development permit not in accordance with this Part or fails to meet the criteria listed in subsections (b)(1) through (3), the Department will rescind the municipality's or county's authority to administer the Department's regulatory floodway permit program for appropriate uses.
- j) The following shall not be delegated to municipalities and counties as part of this Section and shall be subject to Department review or Department permits:
  - 1) Department permits shall be issued to organizations that are exempt from



the municipality's or county's ordinance.

- 2) The Department will permit Department projects, dams (as defined by 17 Ill. Adm. Code 3702) and all other state, federal or local unit of government projects, including projects of the municipalities and counties.
- 3) The Department will permit construction and other activities in public bodies of water pursuant to 17 Ill. Adm. Code 3704.
- 4) The Department will review an engineer's determination that an existing bridge or culvert is not a source of flood damage pursuant to Section 3708.70.
- 5) The Department will review an engineer's determination that a proposed bridge affected by backwater from a downstream receiving stream may be built with a smaller opening pursuant to Section 3708.70.
- 6) The Department will retain its authority to accept alternative transition sections and hydraulically equivalent storage as indicated in Section 3708.70.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

#### **Section 3708.100 Violations**

- a) All construction undertaken in a regulatory floodway without a permit, or contrary to a permit issued in accordance with this Part, shall be unlawful and the Department or any affected municipality or county will proceed to obtain injunctive relief for abatement or removal of such unlawful construction. The Department will record in the appropriate county recorder's office a notice on each parcel on which a violation exists, and the results of investigations and any hearings conducted and subsequent orders issued to resolve the violation.
- b) Municipalities and counties are responsible for pursuing all necessary enforcement procedures to resolve any regulatory floodway violations of their flood plain ordinance.
- c) Department employees may be requested by municipalities or counties, without subpoena, to testify in legal proceedings regarding violations of this Part.

#### **Section 3708.110 Permit Application**

Applicants for permits shall submit the following information and materials. For projects involving construction at more than one location, separate permit applications shall be submitted

for each location.

a) Application Form

- 1) Applications for permit shall be made by submitting a completed application for permit form furnished by the Department. As a minimum, the following information shall be provided:
  - A) Name and address of applicant;
  - B) Site location (including legal description) of the property, drawn to scale, on the regulatory floodway map, indicating whether it is proposed to be in an incorporated or unincorporated area;
  - C) Name of stream or body of water affected;
  - D) Description of proposed activity;
  - E) Statement of purpose of proposed activity;
  - F) Anticipated dates of initiation and completion of activity;
  - G) Names and mailing addresses of the owner of the subject property if different from the applicant; and
  - H) Signature of applicant or the applicant's agent.
- 2) Other requirements related to the application form include:
  - A) If the applicant is a corporation, the president or other authorized officer shall sign the application form;
  - B) If the applicant is a county, city or other political subdivision, the application form shall be signed by an authorized officer;
  - C) If the applicant is a partnership, each partner shall sign the application form; and
  - D) If the applicant is a land trust, the trust officer shall sign the name of the trustee by him (her) as trust officer. A disclosure affidavit must be filed with the application, identifying each beneficiary of the trust by name and address and defining the respective interests in the trust.

- b) Permit Application Fee  
The application fees are described in Section 3708.115.
- c) Plan and Data Requirements
  - 1) Plans of the proposed activity shall be provided that include as a minimum:
    - A) A vicinity map showing the site of the activity, name of the waterway, boundary lines, names of and distance of nearest town, community or other identifying location, names of roads in the vicinity of the site, graphic or numerical scale, and north arrow;
    - B) A plan view of the project and engineering study reach showing existing and proposed conditions including principal dimensions of the structure or work, elevations in mean sea level (1929 adjustment) datum, adjacent property lines and ownership, drainage and flood control easements, distance between proposed activity and navigation channel (when the proposed construction is along a commercially navigable body of water), regulatory floodway limit, flood plain limit, location and orientation of cross-sections, north arrow, and a graphic or numerical scale;
    - C) Cross-section views of the project and engineering study reach showing existing and proposed conditions including principal dimensions of the work as shown in plan view, existing and proposed elevations, normal water elevation, 10-year frequency flood elevation, 100-year frequency flood elevation, and graphic or numerical scales (horizontal and vertical);
    - D) A seeding or stabilization plan for the disturbed areas; and
    - E) A copy of the regulatory floodway map, marked to reflect any proposed change in the regulatory floodway location.
  - 2) Engineering calculations and supporting data shall be submitted showing that the proposed work will meet the permit criteria of Section 3708.70.
  - 3) If the regulatory floodway delineation or base flood elevation will change due to the proposed project, the application will not be considered complete until the Department has indicated conditional approval of the regulatory floodway map change and the completed request for the regulatory floodway map change has been submitted to FEMA.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

### **Section 3708.115 Permit Application Fee**

- a) If a permit is required for the activity proposed and is not already permitted by a Regional Permit or Statewide Permit authorization (see Section 3708.170), permit applicants must pay a non-refundable permit application review fee. The fee will be determined by the Department, and the applicant shall be notified of that determination immediately after review of the application. When appropriate and when it is in the best interest of the State, the Department may enter into agreements to allow other State agencies to offset the cost of fees by providing in-kind services in lieu of cash payments. As outlined in this subsection (a), the review fee shall be calculated based on the determination of the base review fee, the application of an escalation adjustment factor, and the addition of review fees from any other applicable regulations. Further processing of the application shall not be initiated until the review fee is received.
  - 1) The base review fee shall be as follows:
    - A) \$200 for appropriate uses that qualify for review by a delegated municipality or county in accordance with Section 3708.90; or
    - B) \$200 for previously permitted appropriate uses requiring new permit authorization in accordance with Section 3708.175 and not involving any changes from the previously permitted activity; or
    - C) \$500 for appropriate uses that comply with the terms and conditions of a general permit in accordance with Section 3708.160; or
    - D) \$1000 for appropriate uses that the Department determines would not require review of a hydrologic and/or hydraulic analysis to demonstrate compliance with the standards listed in Section 3708.70(d); or
    - E) \$3000 for appropriate uses such as certain bridge/culvert crossings, public flood control projects, and other major floodway construction and/or changes to the regulatory floodway that the Department determines will require review of a hydrologic and/or hydraulic analysis to demonstrate compliance with the standards listed in Section 3708.70(d) and/or Section 3708.80. The base review fee shall be increased an additional \$1500 for applications requiring public notice in accordance with Section 3708.120.

## 2) Annual Escalation Adjustment

- A) The review fee amounts in subsection (a)(1) shall be adjusted on July 1 each year to account for inflation. The U.S. Bureau of Labor Statistics' Consumer Price Index Table for all urban consumers (CPI-U), U.S. city average, all items, base period 1982-1984 = 100 (Series ID: CUUR0000SA0) (available on the U.S. Bureau of Labor Statistics' website) shall be used to calculate the adjustment factor. The adjustment factor shall be directly proportional to the change in the CPI index since June 2013 and shall be calculated according to the following formula:

$$\text{Adjustment factor} = \frac{\text{CPI (May of current year)}}{\text{CPI (June 2013)}}$$

- B) The base fee amounts in subsection (a)(1) shall be multiplied by the escalation adjustment factor and rounded to the nearest \$10 to compute the review fee for the coming fiscal year (July 1 through June 30). The review fee shall be capped at \$5000. The dollar amounts that result from these calculations will be posted on the Department's website at: [www.dnr.illinois.gov](http://www.dnr.illinois.gov).

## 3) Review Fee for Multiple-Regulation Projects

If the construction activity being applied for also requires authorization under 17 Ill. Adm. Code 3702 (Rules for Construction and Maintenance of Dams) and/or 17 Ill. Adm. Code 3704 (Regulation of Public Waters), the review fee for each Part shall be added to calculate the total review fee. The review fee shall be capped at \$5000.

## b) Submission of Fees

- 1) Except when possible through electronic fee submittal, the applicant shall submit the required fee amounts in the form of a check or money order made payable to the Illinois Department of Natural Resources.
- 2) If the review fee is not received within 90 days after the Department's notification of the amount of the fee, the application shall be withdrawn. A new application and review fee will need to be submitted to restart the application process.
- 3) Insufficient payment or failure of a fee payment to clear the bank it is drawn against will result in the automatic withdrawal of the application.

- 4) All fees shall be deposited into the State Boating Act Fund (see 615 ILCS 5/35).
- c) Refund of Permit Application Fees  
Except for refunding of overpayments, permit application fees shall not be refunded. Application fees are tendered for consideration of the application only and do not imply any promise of permit issuance by the Department.

(Source: Amended at 39 Ill. Reg. 1176, effective December 31, 2014)

### **Section 3708.120 Public Notice**

- a) The Department will issue public notices for proposed regulatory floodway map revisions and projects in public waters.
- b) The notice will allow a period of at least twenty-one days for the submission of comments. The notice will contain a description of the proposed action, its location, the name of the applicant and the name of a Department contact. Notices will be mailed to the following:
  - 1) Owners of adjacent upstream, downstream and potentially affected property;
  - 2) Affected state and federal agencies;
  - 3) Local officials of potentially affected communities and governmental agencies, including the Northeastern Illinois Planning Commission;
  - 4) Adjacent states when interstate waters are involved; and
  - 5) The applicant.
- c) Failure to mail notices to all of the persons listed in subsection (a) shall not affect the substantive or procedural rights of any affected party who has received actual notice of the application.
- d) Objections received relevant to the criteria in this Part will be forwarded to the applicant for resolution. The applicant shall advise the Department of the resolution or, if resolution cannot be achieved, of his or her views regarding the validity of the objections.

### **Section 3708.130 Public Hearings**

The Department will hold a public hearing to solicit information regarding a proposed regulatory

floodway map change when the Department deems a public hearing to be the most timely means of receiving the information required to make a decision. Public hearings will be conducted by a hearing officer appointed by the Department and an official transcript will be made. The Department may use the records and findings of other agency hearings in its own review.

**Section 3708.140 Time to Permit Issuance; Emergency Authorizations; Duration; Revisions**

- a) If permit authority has not been delegated to a municipality or county, the Department, pursuant to Sections 3708.70 and 3708.110, will either grant approval or approval with conditions or deny an application for permit within 90 days after receipt of a complete application (or 150 days in the event a hearing is held) unless a longer time period is requested in writing by the applicant. If the Department has not approved the application within these time limits, the application will be deemed denied. The time limit for final Department action on a permit application will be computed from the date on which the Department has received all information required in Section 3708.110. If additional data or revised plans are required by the Department, the time between the request and receipt of the requested material will not be counted in these time periods. Also, the time required for resolution of relevant objections (see Section 3708.120) will not be counted in these time periods.
- b) The Department will issue an emergency permit after receipt of a properly executed application form (including an explanation of why the work to be performed is of an emergency nature) and plan sheets describing the work if harm to life or loss of property is likely to occur if initiation of the activity is delayed. An applicant for an emergency permit is deemed to have agreed to make modifications, at his or her own expense, required by the Department if the work does not comply with Section 3708.70, based upon completion of a review and on comments received during the public comment period, to bring the activity into compliance with this Part.
- c) Permits will be valid until December 31 of the third year following the date of permit issuance, unless the Department determines that the proposed work must be completed sooner, such as in the case of work to correct a violation. Upon the written request of the applicant, permits may be granted for longer periods of time if the expected construction period exceeds three years.
- d) If the permitted activity is not completed by the expiration date of the permit, the permittee shall submit a written request that the expiration date be extended if the permittee intends to pursue the permitted activity. Upon receipt of the request, the Department will extend the expiration date if the permitted activity is in compliance with the rules of the Department at the time of the request.

- e) If, after permit issuance, the permittee decides to revise the approved plans, the permittee shall submit those revised plans to the Department, along with a written request for approval. If the Department determines that the revised plans are in compliance with this Part, an approval of revised plans will be issued to the permittee.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

#### **Section 3708.150 Permit Conditions**

- a) Permits issued under this Part will contain the following standard conditions:
  - 1) This permit is granted in accordance with the Rivers, Lakes and Streams Act [615 ILCS 5].
  - 2) This permit does not convey title to the permittee or recognize title of the permittee to any submerged or other lands, and furthermore, does not convey, lease or provide any right or rights of occupancy or use of the public or private property on which the activity or any part thereof will be located, or otherwise grant to the permittee any right or interest in or to the property, whether the property is owned or possessed by the State of Illinois or by any private or public party or parties.
  - 3) This permit does not release the permittee from liability for damage to persons or property resulting from the work covered by this permit, and does not authorize any injury to private property or invasion of private rights.
  - 4) This permit does not relieve the permittee of the responsibility to adhere to the National Flood Insurance Program flood plain development regulations or to obtain other federal, state or local authorizations required for the construction of the permitted activity; and if the permittee is required by law to obtain approval from any federal, local or other state agency to do the work, this permit is not effective until the required federal, state and local approvals are obtained.
  - 5) The permittee shall, at the permittee's own expense, remove all temporary piling, cofferdams, false work and material incidental to the construction of the project from the regulatory floodway, river, stream or lake in which the work is done. If the permittee fails to remove such structures or materials and if the structure or materials cause an obstruction to normal and flood flows and a loss of flood storage, the Department will have removal made at the expense of the permittee.



- 6) The execution and details of the work authorized shall be subject to the supervision and approval of the Department. Department personnel or their designee shall have right of access to accomplish this purpose.
  - 7) Starting work on the activity authorized will be considered full acceptance by the permittee of the terms and conditions of the permit.
  - 8) The Department in issuing this permit has relied upon the statements and representations made by the permittee and his or her agents; if any substantive statement or representation made by the permittee and his or her agents is found to be false, the permit will be revoked; and when a permit is revoked all rights of the permittee under the permit are voided.
  - 9) If the activity authorized by this permit is located along a meandered lake, the permittee and the permittee's successors shall make no claim to any interest in any accretions caused by the activity.
  - 10) In issuing this permit, the Department does not approve the adequacy of the design or structural strength of the structure or improvement.
  - 11) Noncompliance with the conditions of this permit will be considered grounds for revocation.
- b) In addition, the Department will impose special conditions, such as specifying time limits, as required to assure compliance with this Part.

#### **Section 3708.160 General Permits**

The Department will, for the purpose of providing more expeditious processing of permit applications, issue general permits pertaining to specific types of activities, such as minor bank stabilization projects and utility crossings, meeting such conditions as necessary to assure compliance with the purpose and intent of this Part. General permits may be applicable on a regional basis or may be restricted to specified rivers, lakes and streams, or reaches of rivers and streams. Subsequent to the issuance of a general permit, individual applications must still be submitted but authorizations will be granted for activities meeting all of the terms and conditions of the general permit without notice or interagency coordination. General permits will be issued only after notice and opportunity for public review and comment.

#### **Section 3708.170 Regional Permits and Statewide Permits**

The Department will, by issuance of a regional permit or statewide permit, grant approval for specific types of activities that do not singularly or cumulatively increase flood stage or flood velocities. Subsequent to the issuance of a regional permit or statewide permit, no application or further authorization will be required by the Department for activities meeting the terms and

conditions of the regional permit or statewide permit. Regional permits and statewide permits will be issued only after notice and opportunity for public review and comment.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

#### **Section 3708.170 Regional Permits and Statewide Permits**

The Department will, by issuance of a regional permit or statewide permit, grant approval for specific types of activities that do not singularly or cumulatively increase flood stage or flood velocities. Subsequent to the issuance of a regional permit or statewide permit, no application or further authorization will be required by the Department for activities meeting the terms and conditions of the regional permit or statewide permit. Regional permits and statewide permits will be issued only after notice and opportunity for public review and comment.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)

#### **Section 3708.180 Final Administrative Decisions**

The approval or denial of applications for permit under this Part shall be considered final administrative decisions and are subject to judicial review in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 13 Ill. Reg. 8667, effective May 23, 1989)

#### **Section 3708.190 Effective Date**

Applications for permits received subsequent to the effective date of this Part will be reviewed pursuant to the provisions of this Part.